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**TITLE 329 SOLID WASTE MANAGEMENT BOARD**

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**Proposed Rule**  
LSA Document #12-379**DIGEST**

Amends [329 IAC 7.1-2-5](#), [329 IAC 7.1-2-9](#), [329 IAC 7.1-2-13](#), [329 IAC 7.1-4-1](#), and [329 IAC 16-10-1](#) concerning the priority ranking system for hazardous substance response sites at [329 IAC 7.1](#) and electronic waste at [329 IAC 16](#) to be consistent with the Indiana statute on risk-based remediation. Repeals [329 IAC 7.1-2-13](#). Effective 30 days after filing with the Publisher.

**HISTORY**

Findings and Determination of the Commissioner Pursuant to [IC 13-14-9-7](#) and Second Notice of Comment Period: July 11, 2012, Indiana Register (DIN: [20120711-IR-329120379FDA](#)).

Notice of First Hearing: July 11, 2012, Indiana Register (DIN: [20120711-IR-329120379PHA](#)).

Date of First Hearing: September 18, 2012.

**PUBLIC COMMENTS UNDER [IC 13-14-9-4.5](#)**

[IC 13-14-9-4.5](#) states that a board may not adopt a rule under [IC 13-14-9](#) that is substantively different from the draft rule published under [IC 13-14-9-4](#) until the board has conducted a third comment period that is at least 21 days long. Because this proposed rule is not substantively different from the draft rule published on July 11, 2012, at DIN: [20120711-IR-329120379FDA](#), the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

**SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD**

IDEM requested public comment from July 11, 2012, through August 10, 2012, on IDEM's draft rule language. No comments were received during the second comment period.

**SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING**

On September 18, 2012, the Solid Waste Management Board (board) conducted the first public hearing/board meeting concerning the amendments to the priority ranking system for hazardous substance response sites at [329 IAC 7.1](#) and electronic waste at [329 IAC 16](#) to be consistent with the Indiana statute on risk-based remediation. Repeals [329 IAC 7.1-2-13](#). No comments were made at the first hearing.

**[329 IAC 7.1-2-5](#); [329 IAC 7.1-2-9](#); [329 IAC 7.1-2-13](#); [329 IAC 7.1-4-1](#); [329 IAC 16-10-1](#)**

SECTION 1. [329 IAC 7.1-2-5](#) IS AMENDED TO READ AS FOLLOWS:

**[329 IAC 7.1-2-5](#) "Geologically sensitive area" defined**

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4](#)

Affected: [IC 13-12-3-2](#); [IC 13-25-4-7](#)

Sec. 5. "Geologically sensitive area" is characterized by conditions that allow contaminants to migrate away from the source area in such a manner that invalidates the assumptions of the soil-to-ground water partitioning model used to calculate the default closure levels under the RISC. **risk based remediation standards under [IC 13-12-3-2](#)**. The term includes a karst area or a wellhead protection area.

(Solid Waste Management Board; [329 IAC 7.1-2-5](#); filed Jun 5, 2008, 11:19 a.m.: [20080702-IR-329060147FRA](#))

SECTION 2. [329 IAC 7.1-2-9](#) IS AMENDED TO READ AS FOLLOWS:

**[329 IAC 7.1-2-9](#) "No further action letter" defined**

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4](#)

Affected: [IC 13-12-3-2](#); [IC 13-25-4-7](#)

Sec. 9. "No further action letter" means a letter stating one (1) of the following:

(1) IDEM determines the site:

- (A) meets ~~RISC closure levels for soil or ground water, or both, appropriate for land use~~ **the risk based remediation standards under [IC 13-12-3-2](#)** based on all the information available to the department; or
- (B) does not meet ~~RISC closure levels appropriate for the land use~~ **the risk based remediation standards under [IC 13-12-3-2](#)** and an environmental restrictive covenant is placed on the site and recorded with the appropriate county office of the recorder;

and no further action is warranted or necessary.

(2) Remediation has been completed so that no further action is warranted or currently necessary at the site.

(Solid Waste Management Board; [329 IAC 7.1-2-9](#); filed Jun 5, 2008, 11:19 a.m.: [20080702-IR-329060147FRA](#))

SECTION 3. [329 IAC 7.1-4-1](#) IS AMENDED TO READ AS FOLLOWS:

### **[329 IAC 7.1-4-1](#) Ranking**

**Authority:** [IC 4-22-2](#); [IC 13-12-3-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4](#)

**Affected:** [IC 13-12-3-2](#); [IC 13-25-4-7](#)

Sec. 1. (a) The department shall utilize an objective method to assess, on the basis of available information, the relative potential threat to human health or the environment from hazardous substances response sites or releases. The method used to assess hazardous substances response sites or releases will be called the priority ranking system (PRS).

(b) After the department receives the notification of release, the site or release will be prioritized under the PRS and placed in the appropriate priority as follows:

(1) If the department determines, based on the notification of a release submitted to the department, that one

(1) of the following has occurred, then the site or release is considered a high priority:

(A) Vapors from a listed or characteristic hazardous waste, a hazardous substance, petroleum, petroleum constituent, or contaminant are detected in a habitable structure or other structure such as a utility conduit, storm sewer, or sanitary sewer at a level that exceeds:

(i) the chronic, long term risk-based exposure for a contaminant of concern; or

(ii) ten percent (10%) of the contaminant of concern's lower explosive limit (LEL).

(B) A listed or characteristic hazardous waste, a hazardous substance, petroleum, petroleum constituent, or contaminant is detected in surface water or a drinking water well at or above MCLs or ~~RISC residential default cleanup levels for ground water~~ **that are above the risk based remediation standards under [IC 13-12-3-2](#)**.

(C) Free product is present.

(D) An ecologically sensitive area or a geologically sensitive area is detrimentally affected by the release.

(E) Ground water contaminated by the release is located within three thousand (3,000) feet of a fixed radius of a wellhead or a one (1) year time of travel of a delineated, approved wellhead protection area for a community water system.

(F) Hazardous substances are identified in surface soil, which has a direct soil contact exposure pathway, at levels exceeding ~~RISC residential default cleanup levels:~~ **the risk based remediation standards under [IC 13-12-3-2](#)**.

(2) If the department determines, based on the notification of a release submitted to the department, that one

(1) of the following has occurred, then the site or release is considered a medium priority:

(A) None of the conditions set forth in subdivision (1) are applicable.

(B) Ground water contaminated by the release is located within a five (5) or ten (10) year time of travel of a delineated, approved wellhead protection area for a community water system or within three thousand (3,000) feet of a fixed radius of a wellhead.

(C) A listed or characteristic hazardous waste, a hazardous substance, petroleum, petroleum constituent, or contaminant is detected in ground water at any concentration.

(3) If the department determines, based on the notification of a release submitted to the department, that one

(1) of the following has occurred, then the site or release is considered a low priority:

(A) None of the conditions set forth in subdivisions (1) and (2) are applicable.

(B) No hazardous substance, petroleum, petroleum constituent, or contaminants are detected in ground water.

(C) A listed or characteristic hazardous waste, a hazardous substance, petroleum, petroleum constituent, or contaminant is detected in soil, which does not have a direct soil contact exposure pathway, at

concentrations exceeding ~~RISC residential default cleanup levels~~. **the risk based remediation standards under [IC 13-12-3-2](#).**

(c) For purposes of this section, "surface soil" and "direct soil contact exposure pathway" are defined or further explained in ~~RISC~~. **the risk based remediation standards under [IC 13-12-3-2](#).**

(Solid Waste Management Board; [329 IAC 7.1-4-1](#); filed Jun 5, 2008, 11:19 a.m.: [20080702-IR-329060147FRA](#))

SECTION 4. [329 IAC 16-10-1](#) IS AMENDED TO READ AS FOLLOWS:

**[329 IAC 16-10-1](#) Closure**

**Authority:** [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

**Affected:** [IC 13-12-3-2](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) The owner, operator, or registrant must notify the commissioner at least fourteen (14) days before the date when the registered facility permanently ceases accepting e-waste.

(b) All e-waste and electronic debris must be:

(1) removed from the:

(A) building;

(B) land;

(C) containers; and

(D) vehicles; and

(2) disposed of according to [329 IAC 16-9-1](#);

within sixty (60) days of the registered facility no longer accepting e-waste.

(c) Any contaminants resulting from the e-waste storage or processing that ~~are above RISC industrial levels~~ **exceed the risk based remediation standards under [IC 13-12-3-2](#)** must be contained, removed, and disposed of according to [329 IAC 16-9-1](#). This requirement does not include any contaminants existing before the storage or processing of e-waste.

(d) A registered facility must be certified closed under subsection (e) after all waste is removed and disposed of in accordance with [329 IAC 3.1](#), [329 IAC 10](#), or [329 IAC 13](#), as applicable.

(e) The owner, operator, or registrant must send a certification statement indicating that the requirements of this section have been met to the commissioner within thirty (30) days after completion of the closure. The closure certification will be deemed adequate unless within ninety (90) days of receipt of the closure certification, the commissioner issues a notice of deficiency of closure, including actions necessary to correct the deficiency.

(f) After the closure certification is deemed adequate by the commissioner, the owner, operator, or registrant of the registered facility is released from the obligation of maintaining closure financial responsibility.

(Solid Waste Management Board; [329 IAC 16-10-1](#); filed Aug 15, 2007, 10:22 a.m.: [20070912-IR-329050181FRA](#))

SECTION 5. [329 IAC 7.1-2-13](#) IS REPEALED.

**[Notice of Public Hearing](#)**

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